

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Ernst Reder et al.

Examiner: Benjamin M. Kurtz

Serial No: 10/520,733

Group Art Unit: 1723

Filed: January 10, 2005

Date: October 18, 2010

For: **FILTER CARTRIDGE**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450


SUBMISSION OF APPEAL BRIEF

Sir:

Further to our request for Reinstatement of Appeal filed August 19, 2010 in the United States Patent and Trademark Office, Appellants hereby submit an Appeal Brief in accordance with 37 CFR § 41.37. As indicated in MPEP 1204.01, the previously paid Appeal Brief fee of \$510.00 paid on June 13, 2008 will be applied to this Appeal as a final Board decision has not been made on the prior Appeal. Therefore, as the fee is now \$540.00 authorization to charge Deposit Account 08-3150 in the amount of \$30.00 is provided to cover the difference,

Respectfully submitted,

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BRIEF FOR APPELLANTS

Appellants have appealed the Final Rejection of June 7, 2010. Please consider this Appeal Brief filed in accordance with 37 CFR § 41.37.

REAL PARTY IN INTEREST

By virtue of an Assignment dated December 21, 2004, by the named inventors, the real party in interest is BRITA GmbH, having a business address of Heinrich-Hertz-Strasse 4, Taunusstein, Germany 65232. The Assignment has been recorded in the U.S. Patent and Trademark Office on January 10, 2005 at Reel 017193 and Frame 0215.

RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences or judicial proceedings known to the Appellants, Appellants' legal representative or Assignee which will affect or have bearing on the Board's decision concerning this appeal.

STATUS OF CLAIMS

Claims 1-10 and 15-28 are pending in the application. Claims 11-14 and 29 have been cancelled. Claims 1-10, 15-19, 21 and 25-28 have been rejected. Claims 20, 23 and 24 have been allowed. Claim 22 has been objected to, but would be allowable if

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rewritten in independent form and to include all the limitations of the base claim and any intervening claims. Rejected claims 1-10, 15-19, 21, 25-28 are being appealed.

STATUS OF AMENDMENTS

Appellants' Amendment "K" filed April 29, 2010 filed prior to the Final Office Action was acknowledged in the Final Office Action mailed June 7, 2010. There have been no amendments filed after the Final Rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 claims a filter cartridge 1; see Fig. 1, with a filter material comprising a cartridge container with a bottom wall 2 and a peripheral wall 3 and a lid 10 which durably shuts the cartridge container, see page 1, lines 3-6. The lid is comprised of a lid bottom and a strip-shaped lateral wall, see page 1, line 5 and Figs. 1, 2a, 2b and 3 wherein reference number 11 designates lid bottom and reference number 16 indicates the lateral wall. The lateral wall has a length measured parallel to the peripheral wall, see page 9, lines 9-10, and a linear vertical cross-section, as shown in at least Figs. 2a, 2b and 4, along the entire length of the lateral wall. The lateral wall is fitted at the inner side of the peripheral wall, see page 14, lines 7-8 and Figs. 1, 2a, 2b, 3 and 4. The lateral wall is in contact with the peripheral wall along the entire length of the lateral wall, as clearly illustrated in Figs. 2a, 2b, 3 and 4 as well as last full amended paragraph on page 11. The lid bottom merges with the lateral wall in the direction of the peripheral wall along a first end of an inward curved edge section 14, see page 4, lines 1-4, page 8, line 14, and Figs. 1, 2a, 2b, 3 and 4. The first end of the curved edge section and the lateral wall join in a common wall section 15, tapering inwards, in a forming region, see page 4, lines 3-4, and Figs. 1, 2a, 2b, 3 and 4. A lower end 18 of the common wall section is parallel to the cartridge container peripheral wall adjacent thereto, see page 4, lines 5-12 and Figs. 1, 2a, 2b and 4. The lateral wall has an upper wall section 17, see page 9, lines 1-10, and Figs. 2a, 2b and 4 which is connected to and extends upward from the common wall section that is parallel to the common wall section lower end and the cartridge container peripheral wall adjacent thereto, see page 7, lines 11-18, page 9, lines 8-10, and Figs. 2a, 2b and 4. Glue or a weld connecting at least one section of the common wall section to the peripheral wall was disclosed in original claims 13 and 14 as well as page 7, second full paragraph. The curved edge

section having a second end that merges into an essentially horizontal lid bottom middle section is disclosed on at least page 5, last full paragraph, page 8, last full paragraph and page 9, first and last full paragraphs.

Independent claim 25 claims a filter cartridge 1, see Fig. 1, with a filter material comprising a cartridge container with a bottom wall 2 and a peripheral wall 3 and a lid 10 which durably shuts the cartridge container, see page 1, lines 3-6. The lid is comprised of a lid bottom and a strip-shaped lateral wall, see page 1, line 5 and Figs. 1, 2a, 2b and 3 wherein reference number 11 designates lid bottom and reference number 16 indicates the lateral wall. The lateral wall has a length measured parallel to the peripheral wall, see page 9, lines 9-10, and a linear vertical cross-section as shown in at least Figs. 2a, 2b and 4 along the entire length of the lateral wall, see also page 14, lines 6-7. The lateral wall is fitted at the inner side of the peripheral wall, see page 14, lines 7-8, and Figs. 1, 2a, 2b, 3 and 4. The lateral wall is in contact with the peripheral wall along the entire length of the lateral wall, as clearly illustrated in Figs. 2a, 2b, 3 and 4 as well as last full amended paragraph on page 11. The lid bottom merges with the lateral wall in the direction of the peripheral wall along a first end of an inward curved edge section 14, see page 4, lines 1-4, page 8, line 14, the first full paragraph on page 9, and Figs. 1, 2a, 2b, 3 and 4. The first end of the curved edge section and the lateral wall join in a common wall section 15, tapering inwards, in a forming region, see page 4, lines 3-4, and Figs. 1, 2a, 2b, 3 and 4. A lower end 18 of the common wall section is parallel to the cartridge container peripheral wall adjacent thereto, see page 4, lines 5-12 and Figs. 1, 2a, 2b and 4. The lateral wall has an upper wall section 17, see page 9, lines 1-10, and Figs. 2a, 2b and 4 which is connected to and extends upward from the common wall section that is parallel to the common wall section lower end and the cartridge container peripheral wall adjacent thereto, see page 7, lines 11-18, page 9, lines 8-10, and Figs. 2a, 2b and 4. In vertical cross-section, the lateral wall is a linear tangent line, see page 5, lines 1-4 and Figs. 2a, 2b and 4. The lateral wall is connected to the curved edge section tangentially, see page 5, lines 1-7 and Figs. 2a, 2b and 4. Glue or a weld connecting at least one section of the common wall section to the peripheral wall was disclosed in original claims 13 and 14 as well as page 7, second full paragraph. The curved edge section having a second end that merges into an

essentially horizontal lid bottom middle section is disclosed on at least page 5, last full paragraph, page 8, last full paragraph and page 9, first and last full paragraphs.

Independent claim 26 claims a filter cartridge 1, see Fig. 1, with a filter material comprising a cartridge container with a bottom wall 2 and a peripheral wall 3 and a lid 10 which shuts the cartridge container, see page 1, lines 3-6. The lid is comprised of a lid bottom and a strip-shaped lateral wall, see page 1, line 5 and Figs. 1, 2a, 2b and 3 wherein reference number 11 designates lid bottom and reference number 16 indicates the lateral wall. The lateral wall has a length measured parallel to the peripheral wall, see page 9, lines 9-10, and a linear vertical cross-section as shown in at least Figs. 2a, 2b and 4 along the entire length of the lateral wall. The lateral wall is fitted at the inner side of the peripheral wall, see page 14, lines 7-8, and Figs. 1, 2a, 2b, 3 and 4. The lateral wall is in contact with the peripheral wall along the entire length of the lateral wall, as clearly illustrated in Figs. 2a, 2b, 3 and 4 as well as last full amended paragraph on page 11. The lid bottom merges with the lateral wall in the direction of the peripheral wall along an inward curved edge section 14, see page 4, lines 1-4, page 8, line 14, and Figs. 1, 2a, 2b, 3 and 4. The curved edge section and the lateral wall join in a common wall section 15, tapering inwards, in a forming region, see page 4, lines 3-4, and Figs. 1, 2a, 2b, 3 and 4. A lower end 18 of the common wall section is parallel to the cartridge container peripheral wall adjacent thereto, see page 4, lines 5-12 and Figs. 1, 2a, 2b and 4. The lateral wall has an upper wall section 17, see page 9, lines 1-10, and Figs. 2a, 2b and 4 which is connected to and extends upward from the common wall section that is parallel to the common wall section lower end and the cartridge container peripheral wall adjacent thereto, see page 7, lines 11-18, page 9, lines 8-10, and Figs. 2a, 2b and 4. The curved edge section consists of a single curved portion having a radius of curvature R , see page 9, third full paragraph which states that the curved section 14 is characterized by the curvature radius R and Figs. 2a, 2b, 3 and 4. Glue or a weld connecting at least one section of the common wall section to the peripheral wall was disclosed in original claims 13 and 14 as well as page 7, second full paragraph. The curved edge section having an essentially vertical section at one end in an area of the common wall and immediately merges into an essentially horizontal lid bottom middle section at a second end is disclosed on at least page 5, last full paragraph, page

8, last full paragraph and page 9, first and last full paragraphs, see also former claim 29 wherein the curved edge section immediately merges into an essentially horizontal lid between middle section at the second end.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

At issue is whether claims 1-8, 16-18 and 25-29 (sic-should be 25-28 as claim 29 has been cancelled) are unpatentable according to 35 U.S.C. § 103(a) over Vannoy, U.S. Patent No. 5,830,348 in view of Verlinden, U.S. Patent No. 3,958,904 and Wagner, U.S. Patent No. 1,371,530.

Further at issue is whether claims 9, 10, 19 and 21 are unpatentable according to 35 U.S.C. §103(a) over Vannoy, U.S. Patent No. 5,830,348, Verlinden, U.S. Patent No. 3,958,904 and Wagner, U.S. Patent No. 1,371,530 and further in view of Stifano, U.S. Patent No. 4,109,820.

Additionally at issue is whether claim 15 is unpatentable according to 35 U.S.C. §103(a) over Vannoy, U.S. Patent No. 5,830,348, in view of in view of Verlinden, U.S. Patent No. 3,958,904, Wagner, U.S. Patent No. 1,371,530 and Gizowski, U.S. Publication No. 2001/0000894 A1.

ARGUMENT

Arguments Relating to 35 U.S.C. §103(a) Rejections in View of Vannoy, U.S. Patent No. 5,830,348 in view of Verlinden, U.S. Patent No. 3,958,904 and Wagner, U.S. Patent No. 1,371,520.

Argument Relating to Claim 1

On page 3 of the June 7, 2010 Office Action under section 1, the Examiner states that Vannoy does not teach i) the lid bottom merging with the lateral wall in the direction of the peripheral wall along a first end of an inward curved section, ii) tapering inwards in a forming region or that iii) glue or a weld connects at least one section of the common wall section to the peripheral wall. (numerations added).

It is respectfully submitted that the Examiner has not presented a *prima facie* case of obviousness. It is respectfully submitted that the description of the features lacking in Vannoy is not complete. Vannoy does not disclose a common wall section

that is tapering inwards in a forming region. Appellants' lid bottom and lateral wall are connected by relatively short curved section as claimed. According to Vannoy there is no forming region and no common wall section.

As there is no common wall section in Vannoy, but instead lid bottom 38 connected to the lateral wall adjacent to body 14 by a short horizontal section, it is unclear how one of ordinary skill in the art would be led to combine the scope and content of Vannoy with that of the Verlinden reference. The scope and content of Verlinden teaches a lid generally 3, 23 having a lid bottom comprising "a generally bowl-shaped end wall portion 13a", see column 3, lines 22-23. Accordingly, the Verlinden reference lacks the claimed essentially horizontal lid bottom middle section.

It is respectfully submitted that the claimed combination features amount to more than a predictable result in view of the combination of Vannoy and Verlinden. There is no scope and content within Vannoy or Verlinden that would teach one of ordinary skill in the art to arrive at the claimed invention, absent impermissible hindsight picking and choosing of the isolated features from the cited references.

Moreover, independent claim 1 further claims that the lateral wall has a linear vertical cross-section along the entire length of the lateral wall. On page 2 of the Office Action, the Examiner states that Vannoy teaches this feature. It is respectfully submitted that Vannoy actually teaches away from the lateral wall having a linear vertical cross-section along the entire length of the lateral wall, please see Fig. 1 wherein the lateral wall in contact with body 14 has an upper end that is "U" shaped and curves around the upper end of the body 14.

Appellants' claimed filter cartridge is specifically designed to withstand the force and pressure conditions a filter cartridge can be subjected to. The specifically claimed features act together to reduce pressures on the lid, such as described on pages 4 and 10 of the specification.

As illustrated in Fig. 2a, the force generated by the internal pressure is denoted, for example, by arrow F. It can be seen that the inside pressure presses on the common wall section 15 unless it exerts an additional sealing force, especially in the weld section 19. Fig. 2b corresponds to Fig. 2a, whereby additionally, the lid, bulged by the force F_D acting on the inside, is shown with broken lines. The middle part 12 and